

Curtis E. Camp (“Camp”) appeals from a jury conviction in Allen Superior Court of Class B felony robbery and Class C felony intimidation. He raises one issue: whether his convictions violate the Indiana Constitution’s prohibition against double jeopardy. Concluding that Camp’s convictions do not violate double jeopardy principles, we affirm.

Facts and Procedural History

On November 4, 2005, Camp went into the real estate management office of Diane Moberg (“Moberg”). Camp’s aunt worked as Moberg’s office manager, and Camp had done odd jobs for Moberg. Camp pulled out a handgun, pointed it at Moberg’s face, and told her that he had placed a contract on her life. He told Moberg that he would have her as well as her husband, family, and employees killed unless she paid him and his gang \$9000. Moberg suggested that she could write him a check, but Camp demanded cash. In an effort to keep Camp calm, Moberg told him that business had been slow and asked if Camp and his gang would accept \$5000 instead. Camp agreed to take this offer to the gang and lowered his gun.

Moberg continued to converse with Camp, whom she knew to be a convicted bank robber, and asked him if he was in trouble. Camp raised his gun again and demanded that Moberg give him all the money she had with her. Moberg pulled out \$70 in cash, but asked Camp if she could keep \$20 as she was about to go out of town. Camp agreed and took \$50. Moberg told Camp he should leave so she could get the rest of the money to him before she had to catch a flight. Camp left her office and Moberg called police.

Before the police arrived, Camp called Moberg's cell phone and told her that the gang would accept \$1500 before 6:00 p.m. that evening and that the balance could be wired to him. He told her that he would call again to tell her where to bring the \$1500.

The State charged Camp with Class B felony robbery, Class B felony confinement, and Class C felony intimidation. The State later dismissed the confinement charge. A jury trial commenced on March 23, 2006. At trial, Camp testified that he intended to play a Halloween prank on Moberg's husband, but when he was not in the office, decided to play the prank on Moberg instead. The jury convicted Camp of Class B felony robbery and Class C felony intimidation. The trial court sentenced Camp to consecutive terms of twenty years for robbery and eight years for intimidation. Camp now appeals.

Discussion and Decision

Camp contends that his conviction for intimidation must be vacated because it violates the Double Jeopardy clause of the Indiana Constitution. Article 1, section 14 of the Indiana Constitution provides "No person shall be put in jeopardy twice for the same offense." We review de novo whether a defendant's convictions violate this provision. Spears v. State, 735 N.E.2d 1161, 1166 (Ind. 2000).

Two or more offenses are the "same offense" in violation of the Indiana Constitution, where, with respect to either the statutory elements of the challenged crimes or the actual evidence used to convict, the essential elements of one challenged offense also establish the essential elements of another challenged offense. Richardson v. State, 717 N.E.2d 32, 49-50 (Ind. 1999). Under the "actual evidence test," we examine the

actual evidence presented at trial “to determine whether each challenged offense was established by separate and distinct facts.” Id. at 53.

To demonstrate two offenses are the same under the “actual evidence” test, the appellant must show a reasonable possibility that the facts used by the jury to establish the essential elements of one offense were also used to establish the essential elements of the second offense. Goldsberry v. State, 821 N.E.2d 447, 459 (Ind. Ct. App. 2005). The appellant must show more than a remote or speculative possibility that the same facts were used. Id. To determine what facts were used, we consider the evidence, charging information, final jury instructions, and arguments of counsel. Id. The “reasonable possibility” standard permits convictions of multiple offenses committed as part of a protracted criminal episode provided the case is prosecuted in a manner that insures the same evidence is not used to support multiple verdicts. Richardson, 717 N.E.2d at 53 n.46.

To convict him of Class C felony intimidation, the State was required to prove that Camp, while drawing or using a deadly weapon, communicated a threat to Moberg with the intent that Moberg engage in conduct against her will. See Ind. Code § 35-45-2-1(a), (b)(2) (2004 & Supp. 2006). With respect to Class B felony robbery, the State had to prove that Camp took property from Moberg by use or threat of force or by putting Moberg in fear while armed with a deadly weapon. See Ind. Code § 35-42-5-1(2004).

At trial, Moberg testified that Camp came into her office, pointed a gun at her, and threatened to kill her, her family, and employees if she did not give him \$9000. Tr. pp. 153, 158-59. She then testified that Camp lowered the gun and placed it in his lap. Tr. p.

165. Camp then raised the gun again and said to her, “you’re going to have to give me all the money that you have on you right now.” Tr. p. 166. At that point, Moberg testified, she gave Camp \$50 in cash. Id.

In light of this testimony, Camp fails to show a reasonable probability that the jury relied upon the same evidence to convict him on both charges. His convictions do not violate the double jeopardy provision of the Indiana Constitution.

Affirmed.

NAJAM, J., and MAY, J., concur.